

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 134 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SAEEDKHAN HIMATKHAN PATHAN & OTHERS

Appearance:

MR.M.A.BUKHATI,A.P.P. for Petitioner
MR AJ PATEL for Respondent No. 1, 4, 5, 6, 7, 8, 9

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 06/12/96

ORAL JUDGEMENT: (Per : Kadri, J.)

1. This appeal is filed by the State of Gujarat challenging the legality and validity of the judgment and order dated October 16, 1984 passed by the learned 2nd Extra Additional Sessions Judge, Kheda at Nadiad in Sessions Case No.60 of 1984, whereby the learned 2nd Extra Additional Sessions Judge has acquitted the respondents of the offences under Sections 147, 148, 149, 336, 504 and 506 (2) of the Indian Penal Code.

2. The prosecution case may be summarized as under : The informant Vaziuddin Isamiya is the resident of village Visnoli, Tal. Patlad, Dist.Kheda. On 19-8-83 he went in search of his son in the evening as his son did not return to his house by usual time. When the informant was searching his son, he saw that the respondents were coming in the direction where he was standing. The informant got frightened and, therefore, he returned to his house. Around 7-00 to 7-30 p.m., all the respondents formed an unlawful assembly, armed with deadly weapons and were coming in the direction of his house by shouting that the informant be killed. Therefore, the informant alongwith his wife closed the door of his house and went on the first floor of his house. The respondents tried to break open the door by giving stick blows on the doors of his house and were giving filthy abuses. Some of the respondents also pelted stones on his house. Neither the informant nor his family members were injured in the incident. After sometimes the respondents left the place. The informant lodged the F.I.R. before Police Sub Inspector of Mahelav Police Station with regard to the alleged incident and the attack on his house by the respondents. P.S.I., Mahelav Police Station started investigation and recorded statements of the witnesses and arrested the accused. The panchnama of the scene of offence was prepared and incriminating muddamal articles were recovered at the instance of the respondents. After completing the investigation, the investigating officer filed chargesheet against the respondents in the court of learned Judicial Magistrate First Class, Petlad.

3. Another incident had also taken place as a result of the attack by the respondents on the house of the informant wherein it was alleged that the informant had fired gun shot at the respondents, and, therefore, another crime was registered under Section 307 of the I.P.C. and Section 25 (1) (c) of the Arms Act. Both the cases came to be committed to the court of Sessions at Kheda as the offence under Section 307 of the I.P.C. was exclusively triable by the court of Sessions. The case against the respondents was numbered Sessions Case No.60 of 1984 of the Sessions Court, Kheda at Nadiad and was transferred to learned 2nd Extra Additional Sessions Judge, Kheda at Nadiad.

4. Charge Exh.3 was framed against the respondents which was read over and explained to them. The respondents pleaded not guilty to the charge and claimed to be tried.

5. The prosecution in order to prove its case against the respondents examined the following witnesses.

PW 1 Exh.13 The informant Vaziuddin Isamiya.

PW 2 Exh.18 Hanifabibi Vaziuddin

PW 3 Exh.19 Sabdatkhan Askhan

PW 4 Exh.20 Sabiruddin Amdumiya

PW 5 Exh.21 Himmatkhan Yusufkhan Pathan

PW 6 Exh.26 Police Head Constable Fulsinh Juthabhai

PW 7 Exh.27 P.S.I.Lavjibhai Kanabhai Pranami

The prosecution also led documentary evidence in the nature of complaint, panchnama of the scene of offence, discovery panchnama and certified copy of the judgment rendered by the Gujarat Revenue Tribunal in Revision Application No.TEN B.E.203/84 dated 25-4-84.

6. After completion of the evidence of the prosecution, the respondents were questioned generally and their statements came to be recorded under Section 313 of the Code of Criminal Procedure. The defence of the respondents was that they are falsely involved in the case and they had committed no offence.

7. After appreciating the prosecution evidence and hearing the learned advocates of both the sides, the learned 2nd Extra Additional Sessions Judge recorded the following conclusions :

(i) The oral evidence of eye witnesses viz PW 1 Vaziuddin Isamiya, PW 2 Hanifabibi Vaziuddin, PW 3 Sabdatkhan Askhan and PW 4 Sabiruddin Amdumiya requires close scrutiny.

(ii) There was enmity and ill-will between the informant and accused Nos.1,2 and 9 as there was tenancy proceeding with regard to the land bearing survey No.731/1/A and 731/1/B of village Sunav.

(iii) The oral evidence of prosecution witnesses does not establish that which of the accused carried which deadly weapon on the day of the incident more particularly when then had formed an unlawful assembly and attacked the house of the informant.

(iv) The oral evidence of the prosecution witnesses does not establish that which accused had pelted

stones at the house of the informant.

- (v) There was inconsistency between the oral evidence of the informant, his complaint and the oral evidence of his wife Hanifabibi Vaziuddin.
- (vi) The oral evidence of PW 3 Sabdatkhan Askhan did not establish the individual act committed by the accused persons.
- (vii) The evidence of PW 3 Sabdatkhan Askhan does not prove that the respondents were armed with deadly weapons like sticks and Dharias.
- (viii) The oral evidence of the prosecution witness No.4 Sabiruddin Amdumiya is full of exaggeration and contradictions if compared with the oral evidence of the other witnesses.
- (ix) The discovery of muddamal sticks and Dharias is not proved beyond reasonable doubt by the prosecution witnesses.
- (x) The oral evidence of the prosecution witnesses does not establish that the respondents had intention to insult the informant and his family with intent to provoke breach of the peace.
- (xi) The oral evidence of the prosecution witnesses do not establish that the respondents had given threats to the complainant to cause death or cause injury or cause destruction of any property by fire.

8. On the basis of above referred to conclusion, the learned Additional Sessions Judge acquitted the respondents-accused for the offences as stated above which has given rise to the filing of this appeal by the State of Gujarat. This appeal was admitted by the court on 14-8-85. The notice issued to the respondent No.3 returned unserved with a remark that respondent No.3 is dead. Therefore, the papers of the appeal were placed before the court and the court by its order dated 10-3-92 ordered that the appeal against respondent No.3 stands abated. Therefore, the present appeal is heard against the respondents Nos.1, 2, 4, 5, 6, 7, 8 and 9.

9. The learned Additional Public Prosecutor Mr.M.A.Bukhari has taken us to the entire evidence led by the prosecution on the record of this appeal and has submitted that the learned Addl. Sessions Judge has

erred in not placing reliance on the oral testimony of eye witnesses who have deposed that the respondents had formed an unlawful assembly and were armed with deadly weapons and in furtherance of their common object, had attacked the house of the informant and had pelted stones. It is also submitted that the evidence of the eye witnesses establishes that respondent had given abuses to the informant and his wife and had intimidated them so as to cause breach of peace.

10. On the other hand, it is argued by the learned counsel for the respondents that the evidence of eye witnesses is contradictory as well as inconsistent and the learned Additional Sessions Judge has rightly disbelieved their evidence on the ground that all the witnesses are close relatives and there are exaggeration and contradiction in their evidence. It is claimed on behalf of the respondents that the eye witnesses had not deposed with regard to overtact committed by the respondents and as the evidence of eye witnesses does not establish that which of the accused had carried deadly weapon with him at the time of the attack on the house of the informant, the appeal deserves rejection. It is submitted that the learned Additional Sessions Judge has assigned cogent and convincing reasons in acquitting the respondents and the appeal be dismissed.

11. The arguments of the learned Additional Public Prosecutor that the evidence of eye witnesses is trustworthy and reliance should be placed on their evidence is devoid of merits. It is an admitted fact that there was a dispute with regard to the agricultural land bearing Survey No.731/1/A and 731/1/B of village Sunav between the informant and the respondents Nos.1,2 and 9 and the tenancy proceedings were initiated between the informant and the respondent No.9 which terminated in favour of the respondent No.9. Therefore, the informant had grudge against the respondent No.9 and as a result of that he had lodged the complaint involving other persons also. If the evidence of the eye witnesses is scrutinised closely, it does not establish that the respondents had formed an unlawful assembly armed with deadly weapons and attacked the house of the informant. The evidence does not establish that which respondent had carried deadly weapons at the time of the so called attack on the house of the informant. The evidence of the witnesses is full of contradictions, and, therefore, the learned Additional Sessions Judge was justified in rejecting their evidence treating as highly interested and full of contradiction. The reasons given by the learned Additional Sessions Judge for rejecting the

evidence of eye witnesses are enumerated by us in para 7 of this judgment. Those reasons are eminently just and proper and do not require any interference in this appeal.

12. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the reasons for acquittal given by the trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) GIRIJA NANDINI DEVI & ORS. vs. BIJENDRA NARAIN CHAUDHARY, A.I.R. 1967 SC 1124, and (2) STATE OF KARNATAKA vs HEMA REDDY AND ANOTHER, A.I.R. 1981, SC 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the accused. Suffice it to say that the learned Judge has given cogent and convicting reasons for acquitting the accused and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge.

13. For the foregoing reasons, we do not see any merits in the appeal, and the appeal is liable to be dismissed. The appeal therefore, fails and is dismissed. Muddamal articles are ordered to be disposed of in terms of the directions given by the learned trial Judge in the impugned judgment.

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